* THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

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AND

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* THE HON'BLE SRI JUSTICE K.C. BHANU

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+ WRIT PETITION No.19030 OF 2004

% Dated 03-12-2004

M.Yadagiri Reddy, S/o Late M.Gopal Reddy,
Permanent resident of H.No.5-B,

Kakatiyanagar, Habshiguda,

Ranga Reddy District.

…. PETITIONERS

Vs.

$ V.C.Brahmanna, S/o Veeranna,
R/o H.No.6-3-661/4/3, Somajiguda, Hyderabad.

AND ANOTHER

…. RESPONDENTS

! Counsel for the Petitioner: **Mr. Challa Sitaramaiah, Senior Advocate for K.MAHIPATHI RAO, Advocate.**

^ **For Respondent No.1: Mr. E. Manohar, Senior Advocate for Mr. M.P. Chandramouli.**

For Respondent No.2: GP FOR ASSIGNMENT.

<GIST:

> HEAD NOTE:

? Cases referred

1. (2002) 3 SCC 258
2. (2003) 10 SCC 121
3. (2004) 7 SCC 398
4. (2003) 10 SCC 121
5. (1977) AC 1014

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 19030 of 2004

Between:

M.Yadagiri Reddy, S/o Late M.Gopal Reddy,
Permanent resident of H.No.5-B,

Kakatiyanagar, Habshiguda,

Ranga Reddy District.

..... PETITIONER

AND

1 V.C.Brahmanna, S/o Veeranna,
R/o H.No.6-3-661/4/3, Somajiguda, Hyderabad.

2 Special Court under A.P. Land Grabbing (Prohibition) Act,

II Floor, BRKR Govt., Offices Complex,
Tankbund Road, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to for the reasons setout in the accompanying affidavit the petitioner herein prays that this honourable court be pleased to call for all the records connected with the passing of the judgment and decree in L.G.C.No.48 of 2002 dated 14-07-2004 on the file of the Special Court under the A.P. Land Grabbing (Prohibition) Act, Hyderabad and quash the same by issuing a Writ of Certiorari or any other appropriate Writ or Order or direction as the honourable court deems fit and proper in the circumstances of the case.

For the Petitioner: Mr. Challa Sitaramaiah, Senior Advocate for K.MAHIPATHI RAO, Advocate.

For Respondent No.1: Mr. E. Manohar, Senior Advocate for Mr. M.P. Chandramouli.

For Respondent No.2: GP FOR ASSIGNMENT.

The Court made the following Order: (per Sri B. Sudershan Reddy, J)

The judgment of the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short 'the Act') made in L.G.C No. 48 of 2002 dated 14-7-2004 directing the petitioner to vacate the schedule property and deliver vacant possession of the same to the 1st respondent herein has been impugned in this writ petition.

Facts in brief:

The facts leading to the dispute between the parties are that, according to the 1st respondent, he had purchased the schedule land admeasuring an extent of Acs. 12.00 located in Sy.Nos. 33/6 to 33/10 of Chengicherla, Ghatkesari Mandal, Ranga Reddy District by means of a registered sale deed dated 21-5-1969 from one

Ponnapu Chandraiah and others and has been in possession and enjoyment of the same from the date of purchase. He got fenced the schedule land on three sides and no fencing was made on the southern side of the schedule property. His Manager one

D. Venkata Rao visited the land on 03-08-2002, to remove the shrubs in the land for the purpose of development. The petitioner obstructed his Manager. That though a police report was submitted, no action was taken. The petitioner has no title to the schedule property. It is the further case of the 1st respondent that the petitioner has been trying to fabricate the documents with the connivance of the Village Assistant and Revenue Officials. Due to the acts and conduct of the petitioner in grabbing the land, he was unable to carry out the development operations in the land. The cause of action arose on 03-08-2002 when the petitioner grabbed the land and prevented his Manager from proceeding with clearing of shrubs. It is alleged that the petitioner without any legal entitlement grabbed the land belonging to him.

The case of the petitioner in the counter affidavit filed on his behalf in the Special Court was that the total extent of Sy.No. 33 is Acs.122.00, there are no boundary stones or sub-division stones existing. The application has been filed by the 1st respondent only to usurp the land belonging to him. That his own land is also in Sy.No. 33 of Chengicherla; he had no concern or interest in the application mentioned land. The description of the schedule land is incorrect. That he has been in possession and enjoyment of an extent of Acs.20.13 guntas for the last 20 years located within the boundaries whose details have been mentioned in the counter. He claims to be the pattedar and possessor of the land in Sy.Nos.33/10 and 33/11 in which there is an agricultural well with an electric motor; farmhouse belonging to him and also lemon and goa trees. The records reveal his possession of the land in respect of which he has been paying the land revenue. That the land in his possession is fenced with barbed wire except on the eastern side, which is fenced

with stone kadees.

That a rejoinder has been filed by the 1st respondent with certain further allegations:

The Mandal Revenue Officer confirmed the version of the petitioner in his report dated 13-09-2002 sent under Rule 6(2) of the Andhra Pradesh Land Grabbing (Prohibition) Rules, 1988 by stating as if the petitioner has been in possession and enjoyment of the property for several years. The schedule land has been grabbed with the connivance of the revenue authorities. The Mandal Revenue Officer issued pahani for the year 1999-2000 without any basis. The Mandal Revenue Officer did not verify the extent of the land in Sy.Nos.33/5 to 33/12 admeasuring Acs.12.00. There is no basis for issuing the title deeds and pattedar passbooks in favour of the petitioner herein by the Mandal Revenue Officer.

On the basis of the said pleadings, the following issues were framed by the Special Court for its consideration:

1. Whether the applicant is the owner of the application schedule property?
2. Whether the respondent is land grabber within the meaning of Act XII of 1982?
3. To what relief?

The Special Court upon appreciation of the evidence available on record found the petitioner to be a land grabber having grabbed the schedule land on 03-08-2002 and accordingly ordered his eviction and further directed to deliver vacant possession of the schedule property to the 1st respondent herein within two months.

Legal Environment:

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Before undertaking the further discussion on the merits of the case, it may be appropriate to peruse certain relevant provisions of the Act and as well as the interpretation of the said provisions by the apex Court. Section 2(d) of the Act defines the “land grabber” as follows:

> *“land grabber”* means a person or a group of persons who commits land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorized structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts; and also includes the successors in interest”.

Section 2(e) defines the expression “land grabbing” which reads as under:

> “*land grabbing”* means every activity of grabbing or any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such lands, or enter into or create illegal tenancies or lease and licences agreements or any other illegal agreements in respect of such lands, or to construct unauthorized structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation, of unauthorized structures; and the term “to grab land” shall be construed accordingly”.

The Special Courts are constituted under Section 7 of the Act with extraordinary powers. The Special Court is clothed with the jurisdiction to evolve its own procedure not “inconsistent with natural justice and fair play” and notwithstanding the provisions contained in the Code of Civil Procedure.

Section 8(1) regulates the procedure and powers of the Special Courts and reads thus:

> "The Special Court may, either *suo motu* or on an application made by any person, officer or authority take cognizance of and try every case arising out of any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of, the land grabbed, whether before or after the commencement of this Act, and pass such orders (including orders by way of interim directions) as it deems fit;"

Sub-section (6) of Section 8 makes the findings of the Special Court on the question of title and ownership of the land alleged to have been grabbed as final and binding on all persons having interest in such land. Under Section 9, the Special Court will have the powers of the civil Court and the Court of Session. The Special Court has been conferred powers of a civil Court to examine all questions of title and possession with respect to the land alleged to have been grabbed.

One peculiar feature of this particular enactment is that it contains a schedule added by Act 16 of 1987 containing the statement of objects and reasons for bringing into effect the Act and providing guidelines for the interpretation and implementation of the Act. Thus the schedule is key for understanding various provisions of the Act and the terms defined thereunder. It reads thus:

THE SCHEDULE

The Statement of Objects and Reasons in the Andhra Pradesh Land Grabbing (Prohibition) Bill, 1982.

> It has come to the notice of the Government that there are organised attempts on the part of certain lawless persons operating

individually and in groups to grab either by force or by deceit or otherwise lands belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf or any other private persons. The land grabbers are forming bogus co-operative housing societies or setting up fictitious claims and indulging in large scale and unprecedented and fraudulent sales of land through unscrupulous real estate dealer or otherwise in favour of certain section of people, resulting in large scale accumulation of the unaccounted wealth. As public order is also adversely affected thereby now and then by such unlawful activities of land grabbers in the State, particularly in respect of urban and urbanisable lands, it was felt necessary to arrest and curb such unlawful activities immediately by enacting a special law in that regard.

The apex Court in KONDA LAKSHMANA BAPUJI v. GOVT. OF A.P observed:

> "It must be borne in mind that for purposes of taking cognizance of a case under the Act, existence of an allegation of any act of land grabbing is the sine qua non and not the truth or otherwise of such an allegation. But to hold that a person is a land grabber it is necessary to find that the allegations satisfying the requirements of land grabbing are proved."

Interpreting Clauses (d) and (e) of Section 2 of the Act, the Supreme Court observed:

> "A combined reading of clauses (d) and (e) would suggest that to bring a person within the meaning of the expression "land grabber" it must be shown that: (i)(a) he has taken unauthorisedly, unfairly, greedily, snatched forcibly, violently or unscrupulously any land belonging to the Government or a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person; (b) without any lawful entitlement; and (c) with a view to illegally taking possession of such lands, or enter or create illegal tenancies or lease and licence agreements or any other illegal agreements in respect of such lands or to construct unauthorized structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation of unauthorized structures; or (ii) he has given financial aid to any person for taking illegal

possession of lands or for construction of unauthorized structures thereon; or (iii) he is collecting or attempting to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation; or (iv) he is abetting the doing of any of the abovementioned acts; or (v) that he is the successor-in-interest of any such persons."

The Supreme Court observed that in order to make out a case in a civil case that one is a land grabber, the person invoking the jurisdiction of the Special Court must specifically aver and prove both the ingredients – the factum as well as the intention – that one falls in the categories of the persons mentioned in clause (d) of Section 2 of the Act and he has occupied the land in dispute, which belonged to the applicant, without any lawful entitlement and with a view to or with the intention of illegally taking possession of such land or entering into the land for any of the purposes mentioned in clause (e) of Section 2.

In STATE OF A.P v. P.V. HANUMANTHA RAO, it is observed:

"The provisions of the Act of 1982, which are to be understood in the light of the Statement of Objects and Reasons for the Act and the decision of this Court in the case of Konda Lakshmana Bapuji indicate that a mere doubt raised by the State on the title and possession of the occupant of a land does not make him "a land-grabber". Whenever the right of the occupant is questioned by the State, it is not enough for the occupant to show that he has a prima facie bona fide claim to the land occupied but a burden is cast on him to prove that he is in occupation or possession of the land under a lawful title."

In GOUNI SATYA REDDY v. GOVT. OF A.P, while adverting to the definitions of the words "land grabber" and "land grabbing", the Court observed:

"From a reading of the definitions of the phrases "land grabber" and "land grabbing" it is clear that the grabbing of any land must be without any lawful entitlement and with a view to take possession of such lands illegally. That is to say, the land grabber must be aware of the fact that he is entering into the possession illegally and without any lawful entitlement. If such

elements as indicated above are missing in our view, it would not be a case of land grabbing."

It is observed in clear and categorical terms that merely not being entitled to get the possession itself is not enough to hold a person to be a land grabber unless the possession was taken with an intention to enter into possession illegally. The mere fact of legally not entitled to the possession would not fulfil the ingredients of the definition "land grabber" and "land grabbing". Mere fact that one is not lawfully entitled to enter into possession would not be enough to characterise one to be a land grabber and such entry does not amount to land grabbing unless possession is illegally taken with that view in mind. The person taking possession must know that he is acting illegally while taking possession of the land.

Submissions:

The main submission made before us by the learned senior counsel Sri Challa Sitaramaiah appearing for the petitioner was that the Special Court misdirected itself to the substantial question that had fallen for consideration. The only question was whether the petitioner grabbed the land of the respondent – applicant and whether the petitioner had any intention to grab the respondent – applicant's land. The question whether the petitioner has no title to the land claimed by him in Sy.Nos.33/10, 33/11 and 33/12 is totally immaterial. The Special Court ought not to have permitted the respondent – applicant to get a finding in these proceedings as regards the title to the land claimed by the petitioner.

The learned senior counsel Sri E. Manohar, appearing for the 1st respondent supported the judgment of the Special Court contending that the Special Court having appreciated the documents of title produced by both the parties found the petitioner to be a land grabber and that finding of fact which is based on appreciation

of evidence cannot be interfered with by this Court in exercise of its writ jurisdiction. That re-appreciation of the whole evidence by this Court in exercise of writ jurisdiction is impermissible. Learned senior counsel contended that the respondent – applicant not only prima facie proved the land grabbed by the petitioner to be the land owned by the applicant but established the title beyond any reasonable doubt. The writ petitioner miserably failed to discharge the burden of proving that the land has not been grabbed by him. The Special Court found that the petitioner has no title and therefore, his entry into possession is without any lawful entitlement. The Special Court rightly held the petitioner to be a land grabber since he indulged in the activity of land grabbing.

Analysis of the impugned judgment:

We may now examine the judgment of the Special Court in the light of the submissions made by the learned senior counsel appearing on behalf of the respective parties.

The case of the respondent – applicant is that one Zahoor Ali Khan and others owned vast extents of land in Sy.No.33 of Chengicherla Village. That under Ex. A-1 registration extract of the sale deed dated 23-07-1957 the said Zahoor Ali Khan and four others sold an extent of 609.27 beegas of land in favour of one Rasala Narasaiah and five others. The said Rasala Narasaiah sold Acs.20.00 of land located in Sy.Nos.33/3 to 33/11 to one Ponnapu Chandraiah, S/o Lingaiah under a registered sale deed

dated 24-6-1965. That Chandraiah and other purchasers from Zahoor Ali Khan sold under Exs. A-5 to A-22, an extent of Acs.126.00 of land in Sy.Nso.33/5 to 33/12 in favour of the respondent – applicant and 17 others. The respondent – applicant purchased an extent of Acs.12.00 of land under the original of

Ex. A-22 dated 21-5-1969 from P. Chandraiah and five others. The land is located in

Sy.Nos.33/6 to 33/10.

The writ petitioner does not dispute the title of the respondent – applicant in respect of the land purchased by him under the sale deed referred to hereinabove. In the counter as well as in the evidence he stated in clear and categorical terms that he has no concern with the respondent – applicant's land. That the land in his possession is totally different from the land in respect of which the respondent – applicant asserts his right, title and interest. The petitioner claims that he is the owner of an extent of Acs.20.13 guntas in Sy.Nos.33/10 and 33/11. This aspect of the matter cannot be ignored notwithstanding the submission made by the learned senior counsel appearing on behalf of the respondent – applicant relying on certain stray sentences in the evidence of the writ petitioner. The stray sentences elicited in the cross examination, in our considered opinion, cannot be relied upon to ignore the very claim of the writ petitioner that he has nothing to do with the respondent – applicant's land. The writ petitioner asserted that the land which is in his possession is agricultural land with a farm house, well, lemon and goa trees whereas the land claimed by the respondent – applicant, even according to him, is a waste land containing some shrubs which he wanted to clear through his Manager. It is precisely for that reason, the writ petitioner filed I.A No. 625 of 2004 under Order 26 Rule 9 of CPC with a prayer to appoint an advocate – Commissioner with the assistance of a Surveyor for local inspection to elucidate the facts of physical features of the land owned by him for the just decision of the case. That application has been dismissed by the Special Court after the pronouncement of the judgment in the main case.

It is evident from the report submitted by the Mandal Revenue Officer that the total area of Sy.No. 33/10 is Acs.13.34 guntas. The respondent – applicant accepted

in his evidence that the land purchased by him under Ex. A-22 was not demarcated and the sale deed does not mention the area in each Sy.Nos.33/6 to 33/10. The admission in the cross examination is in the following manner:

> "It is not mentioned the extent purchased by me Survey numberwise but total extent is mentioned. It is true that in the Ex. A22 or plan attached to sale deed, it is not mentioned extent of each Sy.No and how much land purchased in each Sy.No. Basing of my knowledge at the time of purchase I can say 33/6 commence on the east of the plan but the same is not shown in the sketch."

In the evidence of the petitioner it is stated that "the application land admeasuring Ac.12.00 out of Sy.Nos.33/6 to 33/10 is un-identifiable. The very location of the application land is un-certain with no specific boundaries. The contents of the Sale Deed (Ex.A.22) and the Plan attached to it does not of the land in each survey Number i.e. Sy.Nos.33/6 to 33/10" (sic.). In the examination in chief, he gave the details of Sy.Nos.33/6 to 33/10 in the following manner:

Ac.-Gts.

The extent of Sy.No.33/6 is 11 – 33

The extent of Sy.No.33/7 is 21 – 25

The extent of Sy.No.33/8 is 15 – 31

The extent of Sy.No.33/9 is 16 – 20

The extent of Sy.No.33/10 is 13 – 34

Total extent of above Sy.Nos. 79 – 23

We are required to appreciate that this portion of the evidence of the writ petitioner was not subjected to any cross examination. It is also required to notice that the writ petitioner does not claim any land whatsoever in Sy.Nos.33/5 to 9. Both

the writ petitioner as well as the respondent – applicant each claims to be in possession of some extent of land in Sy.No. 33/10. The whole controversy between the parties centers around this crucial aspect of the matter which did not receive the required attention from the Special Court and the same has resulted in the Special Court misdirecting itself to the crucial question. The 1st respondent – applicant does not assert his right, title or interest in Sy.No.33/11 in respect of which the writ petitioner asserts his title. Therefore, the whole controversy surrounds as to what is the extent of the land in possession of the respondent – applicant and the writ petitioner each in Sy.No. 33/10.

The report of the Mandal Revenue Officer which has been subjected to criticism by the Special Court also conforms the extents of land in Sy.Nos. 33/6 to 33/10 as stated by the petitioner in his evidence. The Mandal Revenue Officer has not been summoned and examined. Nothing prevented the respondent – applicant to summon the Mandal Revenue Officer and subject him to cross-examination. Nothing prevented the Court from summoning the Mandal Revenue Officer for the purposes of recording his statement. The report submitted by the Mandal Revenue Officer as is required under Rule 6 of the said Rules could not have been subjected to such criticism in the absence of his examination. Every application filed under sub-section (1) of Section 8 of the Act is required to be referred for local inspection or verification or both by the Mandal Revenue Officer having jurisdiction over the area or by any other officers of the Government authorized by the Court in that behalf. The Mandal Revenue Officer to whom the application has been so referred is required to make or cause to be made an inspection or verification or both and submit a full and complete report with reference to the revenue records and facts on ground as to the following:

i. the correctness of the statements made in the application with regard to columns 1 to 15 and 19 in Form – I;

ii. the facts relating to ownerships, actual possession and use

of the land concerned; and

iii. such other particulars and information as would be useful to the Court to arrive at a correct decision on the claims made in the application.

The Mandal Revenue Officer is required to furnish the copies of the extracts of the government records to show the survey number and proof of possession, ownership and use of the land and payment of dues to the Government. Such is the importance of the report submitted by the Mandal Revenue Officer. It is not that the correctness of the report cannot be disputed. The Mandal Revenue Officer could have been summoned if either of the parties intended to dispute the correctness of the report.

The Special Court instead of adverting itself to the question as to whether the writ petitioner herein entered into the land admeasuring Acs.12.00 of land in Sy.Nos.33/6 to 33/10 or any portion thereof which is admittedly owned by the respondent – applicant concentrated on determining the claim of the ownership of the writ petitioner in respect of land admeasuring
Acs.20.13 guntas in Sy.Nos.33/10 and 33/11. The Special Court totally ignored the vital aspect of the matter that there is a possibility of both the writ petitioner as well as the respondent – applicant each being in possession of some extent of land in Sy.No.33/10. The Special Court ignored the vital fact that the respondent – applicant conveniently nowhere mentioned about the total extent of the land in Sy.No.33/10. Nor Ex.A-22 registered sale deed under which he purchased the land shows anything about the details of extents of land in each Sy.Nos.33/6 to 33/10. Whether the petitioner has any right, title to the land claimed by him is of no consequence, particularly in view of the concession and admission made by him that he has no concern whatsoever with the application schedule land owned by the respondent – applicant. It was totally unnecessary for the Special Court to go into the question

whether the writ petitioner has no title to the land claimed by him in Sy.Nos.33/10, 33/11 and 33/12. The issue is whether the petitioner grabbed the land belonging to the respondent – applicant admeasuring Acs.12.00 of land located in Sy.Nos.33/6 to 33/10. The petitioner cannot be held to have grabbed the schedule land on the premise that he failed to establish the title to the land claimed by him in Sy.Nos.33/10, 33/11 and 33/12.

In that view of the matter, it is totally unnecessary to dilate on the subject whether the respondent – applicant made any attempt to show that he has some land even in Sy.Nos.33/11 and 33/12 since his case is confined and based on Ex. A-22 sale deed dated under which he purchased only an extent of Acs.12.00 of land in Sy.Nos.33/6 to 33/10. Having regard to the nature of defence set up by the petitioner in the L.G.C, there cannot be any dispute of ownership of the 1st respondent – applicant with regard to Acs.12.00 of land located in Sy.Nos.33/6 to 33/10 in respect of which the writ petitioner cannot be allowed to have any claim whatsoever.

The Special Court completely ignored the material evidence available on record as to the nature and identity of the land claimed by the writ petitioner as well as the 1st respondent – applicant. According to the respondent – applicant, the land admeasuring Acs.12.00 of land purchased by him under Ex. A-22 sale deed admeasuring Acs.12.00 of land is a waste land covered by shrubs and whereas the land claimed by the writ petitioner is an agricultural land with a well. There are lemon and goa trees in the land. Both of them are absolutely clear in their evidence and none of them claims the land belonging to the other. It is essentially a dispute of identity of the land. It is not a case of grabbing of land.

The Special Court having regard to the nature of controversy could have easily resolved the conflict by appointing an advocate – Commissioner duly assisted by a qualified Surveyor to survey and demarcate the land and the report after the survey could have easily put an end to the controversy. The advocate – Commissioner appointed by the Special Court to note down the physical features of the application property bearing Sy.Nos.33/6 to 33/10 submitted a report inter alia stating that he "found it difficult to measure the same. The length of the land which starts after the road from northern side to southern side is measuring approximately 200 ft. Likewise at the end of the said property from northern side to southern side is broader than that of the beginning and it is approximately admeasuring around 300 ft. The length of the land starting from eastern side to western side i.e., the end of the application schedule property is very vast as stated supra and therefore as it was difficult to take the measurement, I did not measure the same."

This report submitted by the advocate – Commissioner should have been an eye opener to the Special Court necessitating to get the land surveyed and demarcated with the assistance of a qualified Surveyor whose report could have put an end to the controversy.

Parameters of Judicial Review:

Now we shall take up the question with regard to the scope of jurisdiction of this Court under Article 226 of the Constitution of India and the parameters thereof in petition against the Judgment of the Special Court. This question is not *res integra* but squarely covered by the decision rendered by the Supreme Court in *State of A.P v. P.V.Hanumantha Rao*. In the said decision, it is observed that "In the 'decision-making process', if the court, tribunal or authority deciding the case, has ignored vital evidence and thereby arrived at erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction, the

constitutional power of the High Court under Articles 226 and 227 can be invoked to set right such errors and prevent gross injustice to the party complaining."

While adverting as to the extent of availability of judicial review in a petition against the order of the Special Court, the Court observed that "the High Court, which alone could have examined the correctness of the decision of the Special Court, in the absence of any remedy of appeal, rightly observed that it was within its power to reexamine the evidence to ascertain the correctness of the findings of the Special Court…..The High Court in its writ jurisdiction was, therefore, fully justified in examining those documents of title and upsetting the judgment of the Special Court on the ground that material evidence and circumstances proved by the occupants were overlooked in holding the occupants as land-grabbers." It is thus clear that while re-appreciation of evidence in every case by this Court converting itself into a court of appeal may not be permissible and available in a proceeding under Article 226 of the Constitution of India but re-examination of the evidence for the purpose of satisfying to itself whether important evidence has been overlooked and the legal provisions involved are misinterpreted or misapplied is always available. Recording of a finding of fact by an inferior tribunal, relying on legally inadmissible evidence, or where it has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, a writ of certiorari can always be issued, since all such errors amount to an error of law. Whether or not there is an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or misunderstood and more so in cases where the remedy of appeal is not available.

It is so well established and needs no restatement at our hands that a superior court exercising certiorari jurisdiction could intervene, if a court or Tribunal plainly misdirects itself in fact or law. Lord Wilberforce, in explaining the power of judicial review in *Secretary of State for Education and Science v. Tameside MBC* observed that "If a judgment requires, before it can be made, the existence of some facts, then, although the evaluation of those facts is…..the court must inquire whether those facts exist, and have been taken into account, whether the judgment has been upon a proper self-direction as to those facts, whether the judgment has not been made upon other facts which ought not to have been taken into account. If those requirements are not met, then the exercise of judgment, however bona fide it may be, becomes capable of challenge."

The concept of error of law not only includes the giving of reasons that are bad in law but also includes the application of a wrong legal test to the facts found, taking irrelevant considerations into account and failing to take relevant considerations into account, exercising a discretion on the basis of any other incorrect legal principles, misdirection as to the burden of proof and wrongful admission or exclusion of evidence, as well as arriving at a conclusion without any supporting evidence (see: Judicial Review of Administrative Action by De Smith, Woolf and Jowell, Fifth Edition). Therefore, it cannot be unqualifiedly asserted that the Courts exercising power of judicial review have no part to play in the assessment of fact. This role however, is distinct from the role of an appellate Court. This distinction always be borne in mind.

The question in the instant case is whether the Special Court misdirected itself as to the burden of proof? Whether the Judgment has been made upon facts which ought not to have been taken into account?

That under the provisions of the Act, it would be enough, if it is *prima facie* proved the land alleged to have been grabbed to be the land owned by the Government or

by a private person and the burden of proving that the land has not been grabbed casts upon that person who is alleged to have grabbed the land. The Special Court shall presume that the person who is alleged to have grabbed the land is a land grabber. The Special Court in the instant case, having examined the title of the writ petitioner in respect of the land which he asserted his title, found no merit in the claim and on that basis held the petitioner to be a land grabber. This is where the Special Court misdirected itself and applied the legal principle incorrectly. It was totally unnecessary for the Special Court to go into the question of title in respect of which there is no allegation of grabbing. The writ petitioner did not assert his title and failed to establish the same with regard to the land alleged to have been grabbed. On the other hand, the petitioner asserted that he had no claim in respect of the land which is alleged to have been grabbed. The Special Court committed an error in arriving at a conclusion to hold the petitioner to be a land grabber without any supporting evidence. The error so committed by the Special Court is thus an error of law. In the circumstances, we are unable to persuade ourselves to accept the contention urged by the learned senior counsel appearing for the respondents.

Conclusion:

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The findings recorded by the Special Court that the petitioner grabbed the entire extent of Acs.12.00 of schedule land belonging to the 1st respondent – applicant is totally unsustainable for the reason that it is not based on any evidence. The Special Court misdirected itself in proceeding to consider whether the petitioner had any lawful entitlement and title to the land admeasuring Acs.20.13 guntas located in Sy.Nos.33/10 and 33/11 instead of concentrating on the issue as to whether the petitioner grabbed the schedule land or any portion thereof covered by Sy.Nos.33/6 to 33/10 in respect of which the respondent – applicant asserted title and in respect of which the petitioner did not claim any title. It is that misdirection

which had resulted in erroneous decision. The decision of the Special Court is vitiated by error apparent on the face of the record and the error had mainly crept into the record on the grounds noticed hereinabove and also for the reason of its refusal to appoint a qualified Surveyor to get the land demarcated as prayed for by the writ petitioner. There is no element of land grabbing as such involved.

We may, however, hasten to add that the writ petitioner is not entitled to claim any portion of the land in Sy.Nos.33/6 to 33/10 admeasuring Acs.12.00 in respect of which the 1st respondent – applicant has claimed his title about which there is no dispute and any issue raised by the writ petitioner. The possession of the petitioner, if any found in any portion of the schedule land admeasuring Acs.12.00 located in Sy.Nos.33/6 to 33/10 would not only be illegal but without any lawful entitlement and that possession, if any, found may amount to grabbing of the land. Likewise, there is no need or justification to go into the title and possession of the writ petitioner in respect of land admeasuring Acs.20.13 guntas located in Sy.Nos.33/10 and 33/11 subsequently stated to have been renumbered as Sy.Nos.33/10/AA and 33/11A. The adverse findings recorded by the Special Court about the title of the writ petitioner in respect of those lands is accordingly set aside.

For the aforesaid reasons, I.A No. 625 of 2004 filed by the petitioner under Order 26 Rule 9 CPC is allowed. The Special Court is accordingly directed to appoint an advocate – Commissioner duly assisted by a qualified Surveyor for local inspection to elicit the facts of physical features of the schedule land as well as the land admeasuring Acs.20.13 guntas bearing Sy.Nos.33/10/AA and 33/11A situtated at Chengicherla Village of Ghatkesal Mandal, Ranga Reddy District with the following boundaries:

NORTH : APIIC Cherlapally and road.

SOUTH : Land of Ramaiah and Pasula Pentaiah

EAST : Land of T.L.P Charities.

WEST : Land belongs to Aravinda colony.

The Commissioner shall submit the report to the Special Court which shall duly be taken into consideration for determining the issues that arise for consideration and dispose of the L.G.C in accordance with law. The Special Court shall bear in mind the observations made in this order while considering the question as to whether the petitioner is a land grabber within the meaning of the provisions of the Act and whether any land belonging to the respondent – applicant has been grabbed by the petitioner. We grant liberty to the parties to summon the Mandal Revenue Officer, if they so intend for his examination with particular reference to the verification report submitted by him.

We accordingly set aside the judgment of the Special Court and remit the matter for fresh consideration and disposal of L.G.C No.48 of 2002 in accordance with law within a period of four months from the date of receipt of a copy of this order, in the light of the observations made and directions issued hereinabove.

The Chairman of the Special Court is requested to make over the hearing of the L.G.C to any other Division Bench, other than the one which disposed of the same.

Let a writ of Certiorari be issued accordingly.

The Writ Petition is accordingly allowed. There shall be no order as to costs.

(B. Sudershan Reddy, J)

03-12-2004

(K.C. Bhanu, J)

ks/grr

NOTE: L.R. COPY TO BE MARKED.

B/O

ks

Rule nisi has been made absolute. Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Friday, the third day of December, Two Thousand and Four.

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One fair copy to Hon'ble Sri Justice B. Sudershan Reddy (for His Lordship's kind perusal).

One fair copy to Hon'ble Sri Justice K.C. Bhanu (for His Lordship's kind perusal).

To

1. Special Court under A.P. Land Grabbing (Prohibition) Act,

II Floor, BRKR Govt., Offices Complex, Tankbund Road,

Hyderabad.

2 8 LR copies.

3. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

4. The President, High Court of Bar Association, High Court Buildings, Hyderabad.

5. Two CCs to the Government Pleader for Assignment,

High Court of Andhra Pradesh, Hyderabad (OUT).

6 Two CD copies.